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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Ukiah, California))

MM Docket No. 96-9
RM-8736

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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REPLY COMMENTS OF LIFETALK BROADCASTING ASSOCIATION

LifeTalk Broadcasting Association ("LifeTalk"), by counsel, hereby respectfully submits its Reply Comments in the above-identified proceeding. LifeTalk submitted Comments in this proceeding in which it committed to file an application for a permit to construct a station on the channel in question, Channel 246A in Ukiah, California, if the Commission amends the Table of Allotments as proposed. LifeTalk hereby reiterates that commitment.

LifeTalk filed the original Petition for Rulemaking which led to this proceeding. In that Petition, LifeTalk requested that Channel 246A be reserved for noncommercial use. The Commission rejected that portion of LifeTalk's request in its Notice Proposed Rulemaking ("NPRM"), DA 96-92 (released February 13, 1996). In its Comments, LifeTalk renewed its request for the noncommercial reservation of the channel. The purpose of these Reply Comments is to expand on that point.

LifeTalk had requested that Channel 246A be reserved for noncommercial use because the proximity of Channel 6 television

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station KVIE, Sacramento, California precludes the filing of applications for new stations on the lower portion of the reserved FM band. In paragraph 3 of the NPRM, the Commission noted that although

"a majority of the noncommercial channels are affected by television channel 6 in Sacramento and Eureka, California, all are precluded from use at Ukiah by other domestic noncommercial educational FM stations."

The Commission ruled that this situation did not strictly meet its criteria for eligibility for the reservation of a commercial FM channel. The preclusion criteria cited are the proximity of a channel 6 television station, or the presence of allotments on affected channels in foreign countries. Ibid. At Ukiah it would be possible to operate a station on some of the reserved frequencies because the upper channels are not precluded by television channel 6 -- were it not for other FM stations and/or applications on those channels which do preclude another station. According to the NPRM, precedent does not support the reservation of a commercial channel merely because all of the available noncommercial channels are occupied by stations or applications.

In almost every decision on this topic, the Commission recites the policy that Channel 6 and foreign allotments are the only factors which can give rise to a noncommercial reservation of a commercial channel. However, this reasoning is too simplistic. A review of a number of decisions reveals that there apparently are other factors involved in the decision about whether or not to reserve a commercial channel for noncommercial use.

For instance, in one of the decisions cited in the NPRM, the licensee of an existing noncommercial station on a reserved frequency in an area affected by a local Channel 6 television station requested and received the reservation of a commercial channel to which it could move its station. See, Butte, Montana, 9 F.C.C.Rcd. 2180 (MMB 1994). This happened even though it was possible to resolve the Channel 6 interference problem by colocating the FM antenna with the television antenna. The noncommercial FM licensee admitted that it did not want to incur the expense and difficulty involved in colocating its antenna at the Channel 6 site because of the remote location. Thus the reservation was implemented merely for the convenience of the FM licensee.

In another case, a commercial FM channel was designated as a reserved channel because the Channel 6 operation precluded a noncommercial Class C2 station. Bozeman, Montana, 4 F.C.C.Rcd. 4835 (MMB 1989). The decision does not reveal whether a Class A or a Class C3 station would have been feasible on the noncommercial channel. Presumably however, since the decision did specifically refer to the higher power operation, the smaller facilities were not precluded. For whatever reason, the petitioner/licensee felt compelled to have the higher powered station on the commercial channel and that desire was accommodated by the Commission.

In Ukiah, the Commission indicates that the presence of other noncommercial service in the community is a factor in deciding against the reservation. However, the Commission has reserved commercial channels in situations where the community

already enjoyed abundant noncommercial service. A case in point is the decision in Rochester, Minnesota, 7 F.C.C.Rcd. 6505 (MMB 1992). In a Channel 6-affected area, the licensee of a noncommercial station sought a protected move up to a commercial channel with a reservation despite the fact that three other noncommercial stations served the same community of license: Class A stations on Channel 210 and Channel 214 and a Class C station on Channel 219. Responding to the request, the Commission reserved a commercial channel for the fourth noncommercial service in that community. Certainly then there is precedent to designate a commercial channel as reserved for noncommercial use in a community where noncommercial service already exists.

Given this range of precedents, LifeTalk respectfully submits that the decision should not be dependent upon only Channel 6 proximity or foreign allotments. There can be other adequate legal justification for the reservation of a commercial channel at Ukiah. LifeTalk suggests that the preclusion of the entire noncommercial band by existing stations or pending applications (or such preclusion of channels not otherwise precluded) should be a factor in considering whether to reserve a commercial channel. The demand for additional reserved channels should be weighed against the demand for commercial channels in the community in question.

An analysis of the facts in Ukiah should tip the scales heavily in favor of reserving a commercial channel for noncommercial use. All existing reserved band channels are

precluded by existing noncommercial activity and/or Channel 6 considerations. LifeTalk's Petition for Rulemaking demonstrates the demand for an additional reserved channel. There apparently is no demand for additional nonreserved channel capacity. No comments were filed in this proceeding expressing an interest in Channel 246A for commercial purposes. Furthermore, should such demand arise in the future, there are at least three other commercial channels which could be allotted to Ukiah. LifeTalk documented this fact in its Petition for Rulemaking.

Given these facts, the Commission's concern about displacing prospective commercial service on the nonreserved band appears to be misplaced. It is also contrary to the Commission's past practice. In the past, the Commission has gone so far as to reserve a commercial channel for noncommercial use in a situation where the licensee of the station which would operate on that channel (in an area affected by Channel 6) expressly requested that the channel remain commercial. Siloam Springs, Arkansas, 2 F.C.C.Rcd. 7485 (MMB 1987); affirmed, 4 F.C.C.Rcd. 4920 (1989).

In Ukiah, there is an applicant ready and willing to provide a noncommercial FM service on a reserved noncommercial channel. All of the reserved band channels are precluded from use. There has been no demonstration of interest in the proposed Channel 246A for commercial use. In addition, there remain at least three available nonreserved channels which could be allotted to Ukiah should the demand arise. The Commission should respond to these facts by allotting Channel

246A to Ukiah and reserving it for noncommercial use. LifeTalk urges the Commission to adopt the proposal to allot Channel 246A to Ukiah and further, to reserve that channel for noncommercial use.

Respectfully submitted,

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